

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION



0000088275

Executive Director

ORIGINAL

DATE: SEPTEMBER 4, 2008

DOCKET NOS: WS-04235A-05-0707

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

UTILITY SOURCE, L.L.C.
(EXTENSION OF TIME DEADLINE
CONTAINED IN DECISION NO. 68962)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 15, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 23, 2008 AND SEPTEMBER 24, 2008

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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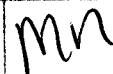
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Arizona Corporation Commission

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION
9 OF UTILITY SOURCE, L.L.C. FOR AN
10 EXTENSION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO
12 PROVIDE WATER AND WASTEWATER
13 SERVICE IN COCONINO COUNTY,
14 ARIZONA.

DOCKET NO. WS-04235A-05-0707

DECISION NO. _____

ORDER EXTENDING TIME DEADLINE
CONTAINED IN DECISION NO. 68962

11 Open Meeting
12 September 23 and 24, 2008
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On September 21, 2006, the Arizona Corporation Commission ("Commission") issued
20 Decision No. 68962 which approved the application of Utility Source, L.L.C. ("Applicant" or
21 "Company") for the conditional extension of its Certificate of Convenience and Necessity
22 ("Certificate") to provide public water and wastewater utility service to Parcels A, B, C and F which
23 are further described in Exhibit A to the Decision. Parcels A and F were to receive both water and
24 wastewater service and Parcels B and C were to receive wastewater service only.

25 2. Parcel A consisted of 90 acres which was to be developed for residential purposes
26 consisting of 156 single family residences and 120 townhomes requiring both water and wastewater
27 service.

28 3. Parcel B consisted of 30 acres which was to be developed as a 306 lot mobile home

1 development where water would be included in the tenants' rental fees charged by the mobile home
2 park which was to drill its own well. The tenants were to receive their wastewater service from the
3 Company.

4 4. Parcel C consisted of 20 acres which was to be developed into 30
5 commercial/industrial lots for which wastewater service alone was to be provided.

6 5. Parcel F consisted of only three acres which were owned by the Company and was
7 utilized for the expansion of its wastewater treatment facilities which it was thought would require
8 both water and wastewater service.

9 6. The Commission's Decision extending the Company's Certificate to provide service
10 to Parcels A, B, C and F was conditioned upon the Company filing, within 365 days of the effective
11 date of the Decision, with the Commission's Docket Control, as a compliance item in this docket, the
12 following documents:

- 13 • a copy of the Arizona Department of Environmental Quality ("ADEQ")
14 Certificate of Approval to Construct ("ATC") the water facilities for Parcels A
and F in the extension area;
- 15 • a copy of the ADEQ ATC for wastewater facilities for Parcels B and C in the
16 extension area;
- 17 • a copy of the applicable ADEQ Aquifer Protection Permit ("APP") and
18 applicable Section 208 Permit for the proposed addition to its wastewater
facilities needed to serve the requested area; and
- 19 • a copy of the Coconino County Franchise for the requested extension area.

20 7. On September 19, 2007, the Company filed its initial request for an extension of time,
21 until September 20, 2008, in order to meet the compliance requirements of Decision No. 68962.
22 With its request, the Company included copies of its APP for the system as well as its ATC for
23 wastewater along with the ATC for the water facilities for Parcel A. The Company further described
delays which developers were experiencing in proceeding with the development of their parcels.

24 8. On March 21, 2008, the Company filed an update and supplement to its initial
25 September 19, 2007, request for an extension of time to comply with Decision No. 68962 and
26 submitted additional documentation with respect to the required compliance documents which were
27 to be filed to comply with the Commission's Decision.
28

1 9. On June 27, 2008, the Applicant's attorney filed a supplemental letter in the docket
2 clarifying the status of the respective compliance documents required by the Decision. Therein, the
3 Company indicated its concurrence with the Commission's Utilities Division ("Staff") that it had
4 successfully filed copies of its ATC for Parcel A together with the relevant documentation for its
5 Section 208 Permit. The Company believes that the portion of its conditional Certificate for
6 wastewater service only for Parcels B and C should be cancelled.¹ Additionally, the Company
7 pointed out that it believes that the requirement for an ATC for Parcel F should be declared complete
8 or be terminated, pointing out that the only water use in this three acre parcel, which is where the
9 Company's wastewater treatment plant is located, is a service line to a hose bib used by plant
10 operators to clean the facilities and there is neither a bathroom nor any distribution facilities located
11 on the parcel which would require ADEQ approval for an ATC.

12 10. Further, the Company pointed out that, with the elimination of Parcels B and C from
13 the extension area, the Company's existing APP which was submitted to the Commission previously
14 is adequate to provide for service as it develops in Parcel A and should be sufficient to meet the
15 requirements of the Decision.

16 11. Lastly, the Company is requesting an extension, until September 20, 2008, in order to
17 secure a franchise for the extension area.

18 12. On August 5, 2008, Staff filed a memorandum with respect to the Company's request
19 for an extension of time in which to comply with Decision No. 68962. In its memorandum, Staff
20 indicated that it agreed that the Company had met the compliance requirements which were required
21 by the Decision for Parcel A and for the filing of the Company's Section 208 Permit. With respect to
22 Parcels B and C, Staff recommends that the Commission cancel the Certificate of the Company for
23 both parcels. Staff found that the Company's filing of its APP had satisfied the compliance
24 requirements of the Decision with the elimination of Parcels B and C from the Company's extension
25 area. Staff disagreed with the Company's position with respect to an ATC for Parcel F, but did not

26 ¹ In its June 27, 2008, letter the Company's attorney describes myriad problems involved in the development of Parcels B
27 and C and indicates that the Company will apply for an extension of its Certificate to provide both water and wastewater
28 service to both parcels in the future once the Company and developers conclude negotiations for the provision of service
to Parcels B and C. This will resolve a complaint brought in a separate proceeding by the developer of Parcel B against
the Company in Docket No. WS-04235A-07-0674.

1 recommend any further treatment in light of the Company's request. Lastly, Staff recommends that
2 the Company's request for an extension of time in which to file a copy of its Coconino County
3 Franchise be approved until December 31, 2008, in order to allow the Company sufficient time to
4 secure this documentation which is required by Decision No. 68962.

5 13. Under the circumstances, we find that the Company's request for an extension of time
6 to secure a Coconino County Franchise for the extension area is reasonable and should be granted as
7 recommended by Staff.

8 14. In light of the Company's position with respect to Parcels B and C, pursuant to
9 Decision No. 68962, we agree that the portion of Applicant's conditional Certificate to provide
10 wastewater service to those parcels should be null and void and the Company may apply for a
11 Certificate extension in the future. Lastly, we believe that since the Company has failed to file an
12 ADEQ ATC for water for Parcel F, the Company's wastewater plant, that the portion of their
13 Certificate for water service to that parcel should also be null and void.

14 **CONCLUSIONS OF LAW**

15 1. The Company is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-282.

17 2. The Commission has jurisdiction over the Company and the subject matter of the
18 extension request addressed herein.

19 3. Staff's recommendation for extension of time, until December 31, 2008, to file a copy
20 of its Coconino County Franchise is reasonable and should be adopted.

21 4. The Company's conditional Certificate to provide wastewater service to Parcels B and
22 C and water service to Parcel F are null and void.

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ORDER

IT IS THEREFORE ORDERED that the Utility Source, L.L.C. shall be granted an extension of time, until December 31, 2008, to file a copy of the franchise to be issued by the Coconino County Board of Supervisors for the extension area as set forth in Exhibit A to Decision No. 68962.

IT IS FURTHER ORDERED that Utility Source, L.L.C.'s Certificate of Convenience and Necessity conditionally approved by the Commission in Decision No. 68962 for Parcels B, C and F as described in Exhibit A to the Decision is hereby null and void.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UTILITY SOURCE, L.L.C.

2 DOCKET NO.: WS-04235A-05-0707

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